

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Amendment of the Commission's)	ET Docket No. 96-2
Rules to Establish a Radio)	RM - 8165
Astronomy Coordination Zone)	
in Puerto Rico)	

To: The Commission

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REPLY COMMENTS OF CELPAGE, INC.

Celpage, Inc., by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Reply Comments in the above-captioned proceeding.

I. Summary of the Comments.

The Comments are split on the Commission's proposal to designate the entire Commonwealth of Puerto Rico as a "Coordination Zone." Not surprisingly, Cornell University ("Cornell"), which operates the Arecibo Observatory (the "Observatory") and which initiated this rule making proceeding, generally supports the proposal, as do various members of the scientific community; radio services providers in Puerto Rico oppose the establishment of a "Coordination Zone."

Cornell's Comments raise particular concern as to the precise effect on telecommunications services the proposed "Coordination Zone" would have. Despite Cornell's previous disclaimers that it does not seek "veto power" over new radio services in Puerto Rico, see, e.g., NPRM at ¶ 5; its Comments indicate that it does in fact desire preferential treatment over the services for which radio spectrum has been allocated on a primary basis. Cornell states

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that it "did not mean to concede that the need for protection [of the Observatory] would always be secondary" and that it believes the Commission would at least in some cases "be required" to determine whether protection of radio astronomy research better served the public interest than the actual provision of services to the public. See Cornell Comments at 5-6. Cornell suggests that existing stations should be expected to make "some cooperative efforts" on behalf of the Observatory. Id. at 7. For example, Cornell proposes that television broadcasters could often enter "time-sharing" arrangements with the Observatory, for stations operating on a 24-hour basis, Cornell suggests that these stations could "cease[] or reduce[] operations" "for a few nights" to accommodate research at the Observatory. Id. at 8.

Cornell contends that the 20-day period for it to raise interference concerns with applicants is insufficient, and requests that the Commission permit Cornell 30 days from the issuance of a public notice accepting a particular application for filing within which to file "written comments." Id. at 6. Cornell also states its intention to provide comments on all applications; where Cornell does not anticipate interference problems, it will file a form letter with the Commission. Id. at 5, n.2.

Cornell further states its belief that "whatever burden is placed on the affected communications services to notify the Observatory is minimal." Id. at 7. Cornell "prefers" that complete applications be sent to it. Id. Cornell also requests that applicants be required to provide it with information concerning the ground elevation at their proposed antenna site, and the name, address, telephone number, fax number and e-mail address of the applicant and its contact person. Id. at 5, n.2. Cornell supports the Commission's proposal not to establish specific interference criteria, and states that it will "be guided by what is the 'reasonable effort'

standard for other spectrum users." Id. at 6-7

The Asociacion de Radiodifusores de Puerto Rico (the Radio Broadcasters Association of Puerto Rico or "PRBA") opposes the NPRM's proposal. The PRBA states that the Observatory already receives the same notice available to all other parties, and notes that "Cornell has far more resources than any of the members of the PRBA[]" See PRBA Comments at 3. The PRBA indicates that most broadcast facilities in Puerto Rico are licensed to small businesses, and finds it "ironic" that Cornell is requesting that "all other spectrum users underwrite its efforts to monitor publicly noticed spectrum activities by other users." Id. at 6, n.6. The PRBA also notes that much of the population of Puerto Rico lives in rural areas, and many of these citizens rely on radio broadcasting as their only source of news, information and weather reports. Id. at 4.

The Puerto Rico Telephone Company (the "PRTC") also opposes the NPRM. The PRTC notes that the Observatory already receives substantial protection under Puerto Rican law, which provides the Observatory with a protected zone comprising approximately 1.5 percent of Puerto Rico's total land area. See PRTC Comments at 3-4. The PRTC points out that the Commission's existing public notice procedures provide the information sought by Cornell, and that Cornell faces no greater burden in this regard than any other party whose operations might be subject to interference. Id. at 5. The PRTC further notes that there are a number of inexpensive services that will monitor application filings with the Commission for their subscribers. Id. at 6.

The PRTC objects to the delays and uncertainty that the proposed "Coordination Zone" will place upon applicants. Id. at 11. PRTC notes that due to the mountainous terrain of Puerto Rico, wireless services are needed to provide basic, essential communications to many of Puerto

Rico's citizens, and the proposed coordination process will delay the provision of those essential services. Id. at 12. The PRTC states: "The goals of the Observatory must be balanced against the risk that even one citizen will be unable to use a telephone because of extra-regulatory delays in system approval." Id. at 13

A number of parties express concern that the proposed requirements are too vague, and provide the Observatory with too much authority over the licensing of radio facilities in Puerto Rico. The PRBA states that the proposal would give the Observatory "overly broad power" in determining whether a particular application would cause harmful interference to the Observatory. See PRBA Comments at 2, 4. The PRTC notes that the NPRM provides no discussion to define the "reasonable technical modifications" which may be required of licensees, but the possible interference resolution techniques suggested by Cornell, and cited in the NPRM are "dramatic." See PRTC Comments at 9-10. The PRTC argues that the Commission's "Coordination Zone" proposal is so vague as to violate Section 4 of the Administrative Procedure Act ("APA"). Id. at 7-9. The Society of Broadcast Engineers ("SBE"), which does not object to the proposed requirement that applicants notify the Observatory of their applications, nonetheless urges the Commission to define "reasonable efforts" and establish specific interference standards. See SBE Comments at 3. Unless guidelines are provided, SBE argues, applicants' engineers will be required to "try[] to hit a 'moving target'" in designing their systems. Id.

II. The "Coordination Zone" Proposal will Disserve the Public Interest.

Neither Cornell, nor any other party supporting the proposed "Coordination Zone" has addressed what Celpage submits is the critical issue in this proceeding -- the impact of this

proposal upon service to the public. As demonstrated by the commenters opposed to the "Coordination Zone," the NPRM's proposal will cause delays in the provision of spectrum-based services in Puerto Rico. That result is contrary to the public interest.

The citizens of Puerto Rico rely heavily on radio services to meet their communications needs. Puerto Rico's terrain is mountainous, and in many areas, it is impractical to provide communications services by wireline. See PRTC Comments at 12. In such areas, the use of spectrum-based technologies is necessary to provide basic telephone services. Id. Mobile services are in high demand in Puerto Rico, as they are on the mainland; and in Puerto Rico as elsewhere, mobile services such as paging provide essential communications for businesses, medical professionals, law enforcement agencies, and others. See Celpage Comments at 8, 10. As in the mainland United States, the broadcast media are the primary sources of news and information for many Puerto Rican citizens. See, e.g., PRBA Comments at 4.

The ability of citizens to receive information with the immediacy spectrum-based services provide is particularly critical in hurricane-prone regions like Puerto Rico. See id.; see also, Comments of American Radio Relay League at 3. For example, during Hurricane Hugo, Celpage's alphanumeric paging services remained operational and were employed by rescue workers, while the majority of landline services were out of service.

In short, radio communications services are of vital importance to the 3.5 million people of Puerto Rico; Cornell has provided no justification whatsoever for subjecting those members of the public to the delays that the proposed "Coordination Zone" will entail. Indeed, Cornell would introduce even more delays to the licensing of radio services in Puerto Rico than is inherent in the NPRM's proposal: Cornell requests thirty days within which to comment upon

applications, rather than the proposed twenty, and states its intentions to file comments of one form or another on *all* applications filed for radio services in Puerto Rico. See Cornell Comments at 5, n.2. Cornell's proposal is particularly inappropriate at a time when the Commission is attempting to ease the paperwork burden on both applicants and the Commission's staff. That proposal is burdensome to applicants, it is detrimental to the public's interest in the rapid deployment of communications services, and it should be rejected.

III. The Unfettered Discretion that the Proposal Would Give the Observatory is Unlawful.

Celpage agrees with the PRTC, the PRBA and SBE that the Commission's "Coordination Zone" proposal is impermissibly vague. The Commission's proposal provides applicants with no guidance as to what proposed operations may be deemed unacceptable to the Observatory, or what "efforts" to "accommodate" the Observatory will be considered "reasonable." The NPRM would give the Observatory *carte blanche* to decide, in the first instance, whether a particular application for radio facilities is acceptable.

Celpage does not question that the Observatory will attempt to act "in good faith" in reviewing the applications it receives, but, the Observatory is hardly a disinterested party. As the PRBA aptly states: "PRBA fears that in deciding whether a given station modification is warranted, Cornell may focus more on the scientific goals of expanding its ability to reach distant galaxies while overlooking such concerns as whether a remote mountain village has access to essential news and information." See PRBA Comments at 4. The PRBA's fears appear to be well-founded; Cornell's Comments clearly indicate that it is predominantly concerned with its own research operations, and is no doubt convinced of the primary importance of those operations. Cf. Cornell Comments at 5-8. Indeed, Cornell goes so far as to suggest that existing

licensees should, at least on occasion, "go dark" to accommodate it. See id. at 8.

Cornell's obvious preference for its own spectrum needs does not impugn Cornell's "good faith;" it is not Cornell's mission to ensure that the citizens of Puerto Rico have access to rapid, efficient, and reasonably priced radio communications services. That, however, is precisely the mission with which Congress has charged this Commission. See 47 U.S.C. § 151.

It is the Commission, not the Observatory, that is obligated to ensure the availability of communications services to the public. Id. The Communications Act of 1934, as amended (the "Act") requires the Commission to determine the technical rules governing applicants for radio licenses. See, e.g., 47 U.S.C. § 303(a)-(f). The Commission is also required by the Act to find, for each application filed with it, whether the public interest, convenience and necessity would be served by a grant of the applicant's proposal. See 47 U.S.C. § 309(a). The NPRM would abdicate those statutory responsibilities, for nearly all radio services in Puerto Rico, in favor a private, interested party. The NPRM's proposal is contrary to the Commission's responsibilities under the Act, and the proposal should not be adopted.

IV. The Observatory is Adequately Protected.

As PRTC points out, a substantial portion of the Island of Puerto Rico has already been zoned so as to protect the Observatory. See PRTC Comments at 3-4. Moreover, the Observatory does not have line-of-sight to anywhere near the amount of territory suggested by Cornell's Petition for Rule Making. See SBE Comments at 2. Terrain shielding and local law provide significant protection to the Observatory from harmful interference; since the Observatory is passively utilizing frequencies allocated on a primary basis to other users, it should not be heard to complain that it requires even more concessions from those primary users.

Additionally, as a number of commenters, including Celpage, have noted, the Communications Act and the Commission's existing procedures provide for public notice of applications and for protest by interested parties. Cornell does not want the "burden" of reviewing that publicly-available information, see Cornell Comments at 6; but, it does want the same thirty-day protest period afforded by Section 309 of the Act to other interested parties, who are required to exercise such ordinary diligence.

Cornell has not justified the preferential treatment it seeks. If reviewing the Commission's public notices is somehow more burdensome for that major university than for the small businesses, citizens' groups and other "interested parties" who regularly do so, the PRTC correctly notes that there are any number of services that will keep Cornell apprised of applications that might affect it for a reasonable fee. See PRTC Comments at 6. None of the comments in this proceeding have demonstrated why Cornell should be permitted to require all other spectrum users in Puerto Rico to bear the costs of protecting Cornell's parochial interests.

Conclusion

For the reasons stated in Celpage's Comments in this proceeding, and for the foregoing reasons, Celpage respectfully requests that the Commission not adopt its proposal to create a Coordination Zone on the Islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, and that this proceeding be terminated.

Respectfully submitted,

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April 30, 1996

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I, Christine McLaughlin, Esq., with the law firm of Joyce & Jacobs, Attorneys at Law, LLP, do hereby certify that on this 30th day of April, 1996, copies of the foregoing Reply Comments of Celpage, Inc. were mailed, postage prepaid to the following:

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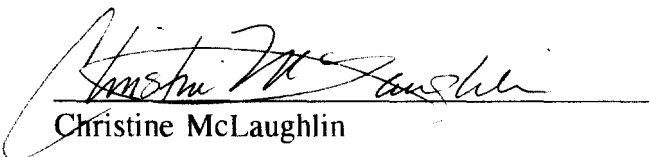
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